IN THE HIGH COURT OF UTTARANCHAL ATNAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b))

Description of case

No. 1032/2004 M/S
Smt. Alka Sharma

Vs.

Additional District Judge/
F.T.C.-IV Dehradun and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision- 27.10.2004

Initial of Judge

In the High Court of Uttaranchal, At Nainital

Writ Petition No. 1032/2004(M/S)

Smt. Alka Sharma ..Petitioner.

Vs.

Additional District Judge/FTC-IV

Dehradun and others . Respondents.

Dated: October 27 , 2004

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Kohli, Senior Advocate assisted by Sri I.P. Kohli learned counsel for the petitioner and Sri V.B.S. Negi, Chief Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari praying for quashing of the order dated 16-10-2004 passed by the respondent no.1 in appeal no. 84/2004 Alka Sharma vs. Director.

Briefly stated the facts of the case are that the petitioner was approved by the Department of Personal and Training, Ministry of Personnal, Public Grievances and Pension, Government of India vide office memorandum No. 23/95-EO (MM022) dated 5.11.1998 for appointment to the ex-cadre tenure post of Director (Admn. And Finance), Survey of India, Dehradun under the Department of Science and Technology. On 28-8-2002 the Surveyor General of India has requested for extension of period of deputation of the petitioner by one year beyond the normal term of four years and as such the tenure of petitioner was extended by a period of one year from December 2002 to December 2003 by the competent authority.

The petitioner was appointed the Vigilance Officer on 19-5-1999 for a period of two years. On return from the foreign training the petitioner was again appointed Vigilance Officer vide letter dated 2-12-2002 for a period of two years or when her tenure ended whichever was earlier.

While serving in the Survey of India, the petitioner was allotted a government quarter. The said allotment was cancelled on

28-3-2003. The ground for cancellation was as the husband of the petitioner was serving in Income Tax Department and therefore there can not be two allotments of the government accommodation. The department has also submitted that the Survey of India s well as the income Tax Department belong to the Union of India and as such the petitioner can not have the liberty of two residences at the same time by way of allotment.

The impugned notice sought to be quashed by the petitioner was issued stating therein that the petitioner was transferred from the Survey of India department and was relieved from the deputation on 7.3.2003. Bungalow No. C-4 was permitted to be retained for residence for a period two months from 8-8-2003 to 7-10-2003 of payment of normal licence fee and thereafter for a period of 05 months and 23 days from 8-10-2003 to 31.3.2004 on payment of twice of normal licence fee under the provision of Estate Allotment Rules 1999. The notice has further stated that the petitioner was directed to vacate the premises and hand over the possession to the Estate Section of Business and Publicity Office on 1.4.2004 but since the premises was not vacated, therefore she was treated as unauthorized occupant by the competent authority.

The petitioner has preferred an appeal before the appellate authority and has raised various grievances. The appellate authority vide his order dated 16.10.2004 has dismissed the appeal.

The grievance of the petitioner is that the authority concerned has not passed any order under Section 5 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Section-5 of the Act reads as under:-

> "5. **Eviction of unauthorized occupants.**-(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of Section 4, the estate officer is satisfied may make an order of eviction, for reasons to be recorded

therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous parrt of the public premises.

(2) If any person refuses or fails to comply with the order of eviction on or before , the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the state officer or any other officer duly authorized by the estate officer in this behalf may after the date so specified or after the expiry of the period, aforesaid, ;whichever is latter, evict that person from, and take possession of, the public premises and may, for the purpose, use such force as may be necessary."

As will appear from the notice dated 5.7.2004 that the the damages has been calculated on a sum of Rs. 7,766/- and the notice thereafter has been sent in form –B and merely section-7 has not been mentioned and therefore the notice will not be invalid. However since the notice was issued on 5.7.2004 and the grievance of the petitioner is that she has not been heard, the competent authority is directed to pass an order after giving the opportunity to the petitioner of being heard provided the petitioner deposits the entire damages from 1.8.2004 due to her upto date within a period of 15 days from the receipt of the certified copy the order. The authority concerned will also adjudicate regarding the damages.

The Prescribed Authority shall decide the case and pass suitable order under Section 5 of the Act within a period of 15 days of the passing of the order. It is made clear that in case any appeal is preferred, the same shall be disposed of within a period of one month after affording opportunity to the petitioner. The petitioner shall be liable to pay the damages as per rules. Till then the petitioner shall not be evicted.

The authority concerned shall dispose of afresh without being influenced by the earlier orders.

Subject to the aforesaid observation the petition is disposed of finally.

(Rajesh Tandon, J.)

ISB